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No. ~~A-1076~~
82-376

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

HOWARD WAITE, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITIONER'S REPLY BRIEF

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REPLY TO THE RESPONDING BRIEF OF THE UNITED STATES.

ARGUMENT

1. In its responding brief the United States is incorrect in its assertion that the issue of estoppel was not raised in the Court of Claims. (Res. 4).

The issue of the government being barred from asserting the statute of limitations was directly briefed in the Plaintiff's Motion To Reconsider (RULE 151) presented to the Court of Claims. The motion was based upon the proposition that the Petitioner should be allowed to amend to plead the facts relating to the inapplicability of the Statute of Limitations.

In the Motion to Reconsider[1] the following language is appropriate to support the position of the Petitioner:

> "Plaintiff submits that the petition should not be dismissed, but that the issues relating to the inapplicability of the statute of limitations be the subject of factual determinations by the Court."(p.2)
>
> * * *
>
> "This statement in the Friedman case, supra, is a recognition of the basic rule of jurisprudence that one party cannot lull an opposing party past the statute of limitations by continuing negotiations which lead toward a resolution of the action."
>
> "The documents attached as exhibits establish that both the

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[1] The record from the Court of Claims has been certified by the lower court, and is on file in the Supreme Court.

> first and second reasons given in Friedman, supra, are present. The Plaintiff was misled by the commission into believing that his application was still open for resolution, although the government did not, as hereinafter stated, intend to act upon the evidence submitted by Plaintiff. (Motion, p. 2-3).

The relevant letters attached to the Appendix in this matter were attached to the Motion for reconsideration, and the acts constituting the actions of the government relied upon by the Plaintiff were argued in the brief. The Plaintiff offered to provide proof at the trial as follows:

> "The evidence at the hearing will develop a continued exchange of correspondence between the parties. During this time the government was conducting itself in such a manner to induce the Plaintiff to understand that if he submitted the necessary documentation that his claim would be considered favorably." (p. 4).

The issue of estoppel to assert the statute of limitations because of the conduct of the government was expressly presented to the Court of Claims in the Motion for Reconsideration.

2. The remaining arguments contained in the Opposition Brief filed by the United States discuss the merits of the Petitioner's claim, but do not treat the issues germain to this Petition for Writ of Certiorari.

The Respondent has not presented any argument concerning the conflicting decisions between the various circuit courts and other federal courts regarding the application of the doctrine of estoppel against the United States Government. The thrust of the Respondent's argument is that the case was correctly decided under the law established in the Court of Claims. This argument entirely begs the question of the substantial conflicting decisions among the various circuits.

3. The Respondent has incorrectly stated (Res.8, footnote 5) that the Petitioner's third contention (Pet. 36-39) is an argument on the merits. The cases cited by Petitioner in the Petition establish a conflict between the Court of Claims and District Court of the District of Columbia District. This conflict is a separate ground for the issuance of a writ of certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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December 15, 1982